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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 130705590-4600-02]

RIN 0648-BD45

Fisheries of the Northeastern United States; Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: Based on Atlantic States Marine Fisheries Commission recommendations, we publish this proposed rule to request public comment on potential changes to Federal American lobster regulations for Lobster Conservation Management Areas 2, 3, 4, and 5, including trap reductions in Areas 2 and 3, and broodstock measures in Areas 2, 3, 4, and 5. The proposed measures aim to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England lobster stock. This action is necessary to ensure fishery regulations for the lobster fishery in Federal waters remain consistent with the intent of the Atlantic Coastal Fisheries Cooperative Management Act.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0110, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0110, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on American Lobster Proposed Rule.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The proposed regulations would modify Federal lobster fishery management measures in the Exclusive Economic Zone (EEZ) under the authority of section 803(b) of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act)(16 U.S.C. 5101 et seq.), which states, in the absence of an approved and implemented Fishery Management Plan under the

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.) and, after consultation with the appropriate fishery management council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, from 3 to 200 nautical miles (nm) offshore. The regulations must be: (1) Compatible with the effective implementation of an Interstate Fishery Management Plan (ISFMP) developed by the Atlantic States Marine Fisheries Commission; and (2) consistent with the National Standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

The purpose of the proposed action is to manage the American lobster fishery in a manner that maximizes resource sustainability, recognizing that Federal management occurs in consort with state management, and thus, that compatibility between state and Federal measures is crucial to the overall success of American lobster management. To achieve this purpose, we are responding to recently-approved state management measures to address poor stock conditions and persistent recruitment failure of the Southern New England (SNE) American lobster stock.

Background

The American lobster fishery is managed by the Commission under Amendment 3 to the ISFMP for American Lobster. Since 1997, the Commission has coordinated the efforts of the states and Federal Government toward sustainable management of the American lobster fishery. We manage the portion of the fishery conducted in Federal waters from 3 to 200 miles offshore, based on management recommendations made by the Commission.

The American lobster management unit is divided between three lobster stocks and seven Lobster Conservation Management Areas. Recent data indicate that the SNE American lobster

stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addendum XVII to Amendment 3 of the ISFMP in February of 2012. The measures in Addendum XVII are intended to reduce fishing exploitation to the SNE lobster stock by 10 percent. To further address stock rebuilding of the SNE lobster stock, Addendum XVIII was adopted in August 2012, to reduce latent effort in the trap fishery and scale the fishery to the diminished size of the SNE stock, through a series of annual trap reductions in Areas 2 and 3. For trap limits to be effective in reducing harvest and rebuilding the stock, latent effort must be addressed to prevent this effort from coming back into the fishery as the stock grows and catch rates increase. Copies of the Addenda are available on the Commission's website at:

<http://www.asmfc.org>.

Proposed Measures

To achieve a 10-percent reduction in fishing exploitation of the SNE American lobster stock under Addendum XVII, the Commission recommended several effort control measures for Areas 2, 3, 4, 5, and 6 to protect broodstock and reduce the amount of American lobsters harvested from these Areas. These measures were reviewed by the Commission's scientific Technical Committee, which found that these measures would likely achieve the desired 10-percent reduction in exploitation. This rule proposes to implement the Commission's recommended measures, including: Minimum carapace length increases; mandatory v-notching of egg-bearing female lobsters; and seasonal fishery closures. Table 1 contains the specific measures adopted by the Commission and proposed for Federal implementation.

Table 1. Addendum XVII Management Measure Changes

Management Measures	Area 2	Area 3	Area 4	Area 5
V-Notching*	Mandatory for legal-sized egg-bearing females	n/a	Mandatory for legal-sized egg-bearing females	Mandatory for legal-sized egg-bearing females
New Minimum Size	n/a	3 ¹⁷ / ₃₂ in (8.97 cm)	n/a	n/a
Seasonal Closure	n/a	n/a	February 1 – March 31	February 1 – March 31

*If v-notching is deemed insufficient to meet the conservation objectives, additional seasonal closures may be adopted by the Commission.

While the harvest of lobsters from Areas 4 and 5 is proposed to be prohibited from February 1 through March 31, annually, we propose to allow additional time to remove and set gear during the closures. Permit holders will have a 2-week period (i.e., through February 14) to remove all lobster traps from the water. In addition, permit holders may begin to set lobster traps 1 week prior to the end of the area closure (i.e., March 25). We are not proposing measures recommended by the Commission for Area 6 (mandatory v-notching and a seasonal closure) because Area 6 is contained entirely within state waters, and is therefore outside of Federal jurisdiction.

Under Addendum XVIII, the Commission approved trap reductions for Areas 2 and 3, following separate trap reduction schedules. Consistent with the Commission's ISFMP and in response to the Commission's recommendations for complementary management measures to address the needs of the SNE stock, we propose to reduce qualified Area 2 trap allocations for Federal lobster permit holders by 25 percent on April 30, 2015, the last day of fishing year (FY) 2014. Area 2 allocations would then be reduced by 5 percent at the end of each subsequent FY for 5 years, as prescribed by the Commission. Similarly, we propose to reduce Area 3 trap allocations by 5 percent on April 30, 2014, the last day of FY 2014. Area 3 allocations would

then be reduced by 5 percent at the end of each subsequent FY for 4 years, as prescribed by the Commission. Table 2 includes a schedule of trap reductions, and the resulting trap allocations based on an initial trap allocation of 800 traps.

Table 2. Area 2 and 3 Trap Reduction Schedule and Example Allocations

Effective Year	Area 2 Reductions	Area 2 Example Allocation	Area 3 Reductions	Area 3 Example Allocation
FY 2014 (present)	NA	800	NA	800
End of FY 2014 (Year 1)	25%	600	5%	760
End of FY 2015 (Year 2)	5%	570	5%	722
End of FY 2016 (Year 3)	5%	542	5%	686
End of FY 2017 (Year 4)	5%	515	5%	652
End of FY 2018 (Year 5)	5%	490	5%	620
End of FY 2019 (Year 6)	5%	466	NA	NA

Depending on the timing of these actions and the readiness of the Commission's Trap Transfer Database, Federal permit holders could transfer traps during the 2014 fishing year, with transferable allocations accounting for the first year of the trap cuts. The resulting allocations based on the first-year reductions and any trap transfers would become effective at the start of FY 2015, or May 1, 2015.

Related Actions and Implementation Options

In addition to these upcoming measures, we recently published a final rule (79 FR 19015; April 7, 2014), based on Commission recommendations, establishing a limited access program in two lobster conservation management areas, Area 2 and the Outer Cape Area, and implementing a lobster Trap Transfer Program in Areas 2 and 3, and the Outer Cape Area. Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we propose to implement trap reductions at the same time as the Trap Transfer Program, as recommended by the Commission. Based on the analysis included in the associated draft Environmental Assessment, the order of implementation affects the resulting

trap allocations. Table 3 includes an example of the resulting trap allocations for an Area 2 permit currently allocated 800 traps following the scheduled 25-percent reduction and transfer in of 200 additional traps.

Table 3. Resulting Year 1 Trap Allocations Based on the Order of Reductions and Transfers

	Scenario 1 (Preferred)	Scenario 2
Initial Allocation	800 traps	800 traps
Step 1:	25% trap reduction	Unable to transfer in traps, already at maximum
Resulting Allocation	600 traps	800 traps
Step 2	Trap transfer allowed, purchased 200 traps	25% trap reduction
Final Allocation in Year 1	800 traps	600 traps

Note that NMFS would cut 200 traps in either scenario, but that only in Scenario 1 would fishers have the potential to immediately mitigate the trap-cut impacts using trap transfers. Under Scenario 1, where trap reductions are scheduled for all allocations just prior to trap transfers, the permit holder's potential allocation (assuming participation in the Trap Transfer Program) would result in significantly more traps than under Scenario 2, where trap transfers would not be allowed if the permit holder is at the maximum trap limit prior to trap reductions. We propose to schedule trap reductions to be effective at 11:59 PM on April 30, 2015, just ahead of trap transfers that have been negotiated and approved during FY 2014, but which will not become effective until 12:01 AM on May 1, 2015, consistent with Scenario 1. Permit holders would be able to transfer traps, based on the first round of trap cuts, during the 2014 fishing year, and the revised allocations resulting from the transfers of cut allocations would become effective at the start of the 2015 Federal fishing year on May 1, 2015. We are specifically requesting comment on this approach.

The effectiveness of the proposed trap cuts is dependent upon and impacted by the

availability of the Trap Transfer Program identified in our recent final rule (79 FR 19015; April 7, 2014). Specifically, both industry and the Commission indicated that a trap transfer program was a necessary precursor to any trap cut program so that lobster fishers could replace their cut traps with transferred traps. In order to maintain lobster business viability, industry and the Commission sought to have trap cuts and trap transferability occur contemporaneously so that businesses did not have to fish at cut levels for an extended time period while waiting for trap transfers to take effect. The timing of the trap cuts and trap transfer programs, therefore, is critical.

The timing of the recently approved Trap Transfer Program has not yet been set and will be dependent upon the completion and effectiveness of the Commission's Trap Tag Database. If the Database is not completed and ready until fall 2014 (the Area 2 and Outer Cape Cod qualification and allocation program will not be completed until then and thus, we will not be able to populate the Database with final trap allocations until then), then trap transfers will not be able to be completed until sometime after that. This will compress the time schedule within which to complete trap transfers and may impact the ability of buyers and sellers to conduct trap transfers in anticipation of the trap cuts that this rule proposes to occur at the close of the FY 2014. Given the novelty of the Trap Transfer Program, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. Therefore, we request comment on the proposed April 30, 2015, trap cut date and whether alternative dates,

including later dates, such as a 1-year delay, might better advance lobster management objectives.

Comments and Responses

To help determine the scope of issues to be addressed and to identify significant issues related to this action, we solicited written comments on an advanced notice of proposed rulemaking (ANPR), published on August 20, 2013 (78 FR 51131). The comment period closed on September 19, 2013. In addition to requesting comment on the Commission's measures, we requested comment on the timing of American lobster actions currently under development.

In total, four letters were submitted in response to the ANPR, three of which were applicable to these proposed measures and are responded to below. The fourth letter was not applicable to the proposed measures and is not discussed further.

Comment 1: The Atlantic Offshore Lobstermen's Association (AOLA), the Commission, and Connecticut Department of Environmental Protection (CT DEP) all commented in support of management measures being proposed.

Response: We agree that implementing mandatory v-notching, a minimum carapace size increase, and seasonal closures will help to address the low level of abundance and persistent recruitment failure of the SNE American lobster stock. In addition, trap reductions are proposed to address rebuilding of the lobster stock by scaling the fishery to size of the SNE stock. For these reasons, we are proposing the full suite of measures approved by the Commission in Addenda XVII and XVIII.

Comment 2: The AOLA expressed their support for maintaining economic flexibility, noting that trap reductions and the Trap Transfer Program should be implemented "on an identical time schedule."

Response: We agree that trap reductions and the Trap Transfer Program should be implemented at the same time to mitigate any potential negative effects of trap reductions, and maintain a viable fleet, but functionally, one needs to be implemented before the other, even if mere moments before the other, simply to better account for and administer trap transfers. We are proposing to implement trap reductions to all Area 2 and 3 allocations for the end of FY 2014 (April 30, 2015, at 11:59 PM), followed by any trap transfers, consistent with the process discussed in our recent final rule (79 FR 19015; April 7, 2014), but would like comment on the order of implementation.

Comment 3: The CT DEP recommended that the trap transfer process be conducted in a manner that allows for the fair participation of all citizens and should be done in an open forum and in conjunction with a fully functional Trap Transfer Database.

Response: As explained in our recent final rule (79 FR 19015; April 7, 2014), NMFS intends to implement an open and accessible Trap Transfer Program to all eligible lobster permit holders. The Program, however, is new and we cannot predict participant behavior and response at this point. NMFS does not want to introduce variables that would engineer market behavior in response to a problem that may not exist. NMFS intends to monitor its Trap Transfer Program and agrees with the commenter that the agency should work with the Commission to investigate ways to make available transferable trap allocations known and accessible to participants.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with federalism implications as defined in E.O. 13132. The proposed measures are based upon the American Lobster ISFMP that was

created by and is overseen by the states. The proposed measures are a result of Addenda XVII and XVIII, which was approved by the states, recommended by the states through the Commission for Federal adoption, and is in place at the state level. Consequently, NMFS has consulted with the states in the creation of the ISFMP, which makes recommendations for Federal action. Additionally, these proposed measures would not pre-empt state law and would do nothing to directly regulate the states.

This proposed rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA).

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires agencies to assess the economic impacts of their proposed regulations on small entities. The objective of the RFA is to consider the impacts of a rulemaking on small entities, and the capacity of those affected by regulations to bear the direct and indirect costs of regulation. We prepared an Initial Regulatory Flexibility Analysis (IRFA) as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The proposed management measures would affect small entities engaged in several different aspects of the lobster fishery. The affected entities include Federal lobster permit holders fishing in SNE, specifically Areas 2, 3, 4 and 5.

Description of the Reasons Why Action by NMFS is Being Considered

Recent data indicate that the SNE American lobster stock, which includes all or part of six Areas, is at a low level of abundance and is experiencing persistent recruitment failure, caused by a combination of environmental factors and continued fishing mortality. To address the poor condition of the SNE stock, the Commission adopted Addenda XVII and XVIII to Amendment 3

of the ISFMP, approving a combination of trap cuts and broodstock measures. The Commission Lobster Board's Plan Development Team has confirmed that the affected states have already issued regulations that are compliant with Addendum XVII measures. To the extent practicable, we aim to implement regulations consistent with Commission recommendations, and those promulgated by our partner states.

The Objectives and Legal Basis for the Proposed Action

The objective of the proposed action is to reduce fishing exploitation and reduce latent effort in the trap fishery to scale the fishery to the size of the Southern New England (SNE) lobster stock. The legal basis for the proposed action is the ISFMP for American lobster and promulgating regulations at 50 CFR part 697.

Description and Estimate of the Number of Small Entities to which the Proposed Rule would Apply

The RFA requires agencies to assure that decision makers consider disproportionate and/or significant adverse economic impacts of their proposed regulations on small entities. This section provides an assessment and discussion of the potential economic impacts of the proposed action, as required of the RFA.

The IRFA is designed to assess the impacts that various regulatory alternatives would have on small entities, including small businesses, and to determine ways to minimize adverse impacts. Under the RFA, an agency does not need to conduct an IRFA or Final Regulatory Flexibility Analysis (FRFA) if a certification can be made that the proposed rule, if adopted, will not have a significant adverse economic impact on a substantial number of small entities.

The purpose of the RFA is to inform the agency, as well as the public, of the expected economic impacts of the various alternatives contained in the proposed rulemaking and to ensure

that the agency considers alternatives that minimize the expected impacts while meeting the goals and objectives of the regulatory documents and applicable statutes.

The recent addition of vessel owner information to the permit data allows us to better define fishing “businesses.” The vessel ownership data identifies all the individual people who own fishing vessels. Vessels can be grouped together according to common owners, which can then be treated as a fishing business, for purposes of RFA analyses. Revenues summed across all vessels in the group and the activities that generate those revenues form the basis for determining whether the entity is a large or small business. Ownership data are available for the potentially impacted by the proposed action from 2010 onward.

The RFA recognizes and defines three kinds of small entities: Small businesses; small organizations; and small governmental jurisdictions. The Small Business Administration (SBA) size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for “small business” concerns. Size standards have been established (and recently modified) for all for-profit economic activities or industries in the North American Industry Classification System (NAICS). Designations of large and small entities were attached based on each entity’s three-year average landings. For entities landing a plurality of revenue in shellfish (NAICS 111412), the threshold for “large” is \$5.0 million. For entities landing a plurality of revenue in finfish (NAICS 111411), the threshold for “large” is \$19.0 million. The number of directly regulated entities for purposes of analyzing the economic impacts and describing those that are small businesses is selected based on permits held. Since this proposed regulation applies only to the businesses which hold permits in 4 areas managed by the conservation measures being amended, only those business entities are evaluated. Business entities that do not own vessels with directly regulated permits are not described.

There are 379 distinct entities identified as directly regulated entities in this action, those that held permits in Areas 2, 3, 4 or 5, or some combination. There were 373 entities that were classified as “small,” while the remaining 6 were classified as “large.” All 6 of the large businesses were designated as shellfish. Until further guidance is provided, for RFA analyses, business entities are classified into the SBA defined categories based on which activity, in the most recent year, produced the greatest gross revenue. An advantage of this approach is that entities are defined as large or small one time for the duration of a year, maintaining action to action consistency. As far as determining whether a business is large or small, once its major activity is determined (based on 2012) the average total revenue from all activities over the most recent three years (2010-2012) is applied against the appropriate threshold.

Of the 373 small entities, 180 are considered a shellfish business, 121 are considered a finfish business, 3 are considered a for-hire business, and 69 could not be identified as either because even though they had a lobster permit (in Areas 1, 2, 3 or 4) they had no earned revenue from fishing activity. Because they had no revenue in the last 3 years, they would be considered small by default, but would also be considered as latent effort.

The entity definition used by the Social Sciences Branch uses only unique combinations of owners. That is, entities are not combined if they have a shared owner. Section 3 of the SBA defines affiliation as: Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated (13 CFR 121.103(f)).

Table 4. Estimate of the number of small entities

Entity type	No of entities	Average Entity revenue
shellfish	180	\$429,000
Finfish	121	\$363,000
No revenue	69	0
For-hire	3	confidential
Total	373	

Table 4 describes the number of regulated small entities and all known revenue from all fishing related activity. Many of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species impacted directly by the proposed action are most likely to be affected. By defining dependence as deriving greater than 50-percent of gross sales from sales of lobster, we are able to identify those ownership groups most likely to be impacted by the proposed regulations. Using this threshold, we find that of the 373 small regulated entities, 180 of them are lobster-dependent.

A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a “confirmation of history” (CPH) if the fishing and permit history of such vessel has been retained lawfully by the applicant. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. The ownership data based on the permits held does not contain information on CPH permits. A total of 23 CPH’s exist for lobster Areas 2, 3, and 4: 8 for Area 1, 9 for Area 3, and 6 for Area 4. One CPH qualifies for a permit in Area 2 and 3, while one CPH qualifies in all 3 of these areas.

While considering the number of affected entities, it is also worth noting that the vast majority of permit holders are either dually permitted (i.e., issued both a federal and state permit) or otherwise subject to a state's lobster regulations. Accordingly, most all Federal permit holders will be required to comply with the proposed measures even if NMFS does not implement these measures. In other words, these federal permit holders will be obligated to comply with these measures and responsibilities attendant to their state permit regardless of whether these same measures are also required under their Federal permit.

Descriptions of Significant Alternatives which Minimize any Significant Economic Impact of Proposed Action on Small Entities

Due to the expected high rate of dual permitting and that the states are already compliant with broodstock measures, the majority of Federal vessels must already abide by these requirements, and therefore have already been impacted. For those vessels not dually permitted, broodstock measures can be expected to have a limited economic impact to permit holders. Because the proposed regulations are consistent with Commission recommendations and current state regulations, developing alternative measures would likely create inconsistencies and regulatory disconnects with the states and would therefore, likely worsen potential economic impacts. Therefore, no alternatives to broodstock measures are considered.

Because the Trap Transfer Program may ease economic impacts of trap reductions and provide added additional business flexibility, we propose to implement trap reductions at roughly the same time, or as close as possible, as the Trap Transfer Program, as recommended by the Commission. In other words, we have timed the trap reductions so that fishers will be able to activate their transferred traps moments after their allocation is reduced. In this way, fishers will not have to fish with reduced traps while waiting for their transferred traps to become allocated.

This could mitigate the impacts of the trap reductions because fishers would be able to transfer traps based on their reduced allocation, prior to the cuts becoming effective. They could buy traps before the cuts take effect and minimize the impacts to their businesses resulting from the trap reductions. To further mitigate trap reductions, a permit holder could also choose to tend his or her remaining traps more often in an attempt to harvest more lobsters and recover income lost from the trap reductions. When considered in conjunction with trap transferability, permit holders remaining in the fishery may be able to transfer in traps up to their original trap cap (i.e., transfer in traps to make up for traps lost through trap reductions). Though this will require capital, the ability to acquire additional traps may help another set of permit holders compensate for trap reductions. Finally, the permit holders who elect to leave the fishery and transfer out traps will be compensated immediately by those fishers purchasing traps.

Given the novelty of trap transferability, it is unclear how much time will be needed for trap sellers and buyers to meet and propose transfers, for Federal and state agencies to meet, reconcile, and approve the proposed transfers, and for permits and trap tag orders to reflect the approved transfer. Consequently, it might prove challenging for all permit holders to participate and complete their desired trap transfer transactions in this first year, which might take on added importance given the proposed trap reductions on April 30, 2015. On the other hand, a delay could exacerbate the condition of the poor stock which could also result in losses in revenue over time. Therefore, we are requesting comment on the proposed April 30, 2015, trap cut date and whether alternative dates, including later dates, such as a 1-year delay, might better advance lobster management objectives. Should the Commission and our state partners suggest a delay and/or alternative approach, we would develop an alternative formally analyzing these impacts. At present, however, such an alternative fails to accomplish the stated objectives of the rule

insofar as unilateral divergence from the Commission's recommendations would create regulatory disconnects with the states and potentially undermine the Lobster Plan.

As discussed in greater detail in the EA, we considered, but rejected two other alternatives, where trap reductions are theoretically approved out-of-sync (i.e., either 5-6 months before or 5-6 months after) with trap transfers. Under either of these scenarios, some permit holders would be prevented from participating in the Trap Transfer Program following trap cuts, resulting in potential loss of economic opportunity, until additional traps could be required. For permit holders whose business model is predicated on fishing at the trap cap, they would be forced to fish at reduced and presumably unprofitable levels for nearly half the fishing year. Because these alternatives may increase economic impacts, the measures proposed in this action are the alternatives which minimize any significant economic impact.

Reporting, Recordkeeping and Other Compliance Requirements

This action contains no new collection-of-information, reporting, or recordkeeping requirements.

Duplication, Overlap or Conflict with other Federal Rules

This action does not duplicate, overlap, or conflict with any other Federal Laws.

List of Subjects in 50 CFR Part 697

Fisheries, fishing.

Dated: July 21, 2014

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR, part 697 is proposed to be amended as follows:

PART 697--ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 et seq.

2. In § 697.2, the definitions of “Federal Area 1 Limited Access Program,” “Federal Area 2 Limited Access Program,” “Federal Area 3 Limited Access Program,” “Federal Area 4 Limited Access Program,” “Federal Area 5 Limited Access Program,” and “Federal Outer Cape Area Limited Access Program” are added in alphabetical order to read as follows:

§ 697.2 Definitions.

* * * * *

Federal Area 1 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 1 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 2 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 2 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 3 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 3 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 4 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 4 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Area 5 Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Area 5 traps, as identified in these regulations at § 697.4(a)(7)(ii).

Federal Outer Cape Cod Area Limited Access Program means the limited access program restricts trap fishing in Area 3 to those federal lobster permits with qualified and allocated Outer Cape Cod Area traps, as identified in these regulations at § 697.4(a)(7)(ii).

* * * * *

3. In § 697.7, revise paragraphs (c)(1)(xxx) and (c)(3)(iii), to read as follows:

§ 697.7 Prohibitions

* * * * *

(c) ***

(1) ***

(xxx) Seasonal Closures The following areas are closed seasonally to lobster fishing.

(A) Outer Cape Area seasonal closure. The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from January 15 through March 15.

(1) Lobster fishing with traps is prohibited in the Outer Cape Area during this seasonal closure. Federal trap fishers are prohibited from possessing or landing lobster taken from the Outer Cape Area during the seasonal closure.

(2) All lobster traps must be removed from Outer Cape Area waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Outer Cape Area waters during this seasonal closure. Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Outer Cape Area waters during this seasonal closure unless the vessel is transiting through the Outer Cape Area pursuant to paragraph (c)(1)(xxx)(A)(4) of this section.

(3) The Outer Cape Area seasonal closure relates only to the Outer Cape Area. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Outer Cape Area designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(4) Transiting Outer Cape Area. Federal lobster permit holders may possess lobster traps on their vessels in the Outer Cape Area during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Outer Cape Area. For the purposes of this section, transiting shall mean passing through the Outer Cape Area without stopping to reach a destination outside the Outer Cape Area.

(5) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from the Outer Cape Area during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(B) Area 4 seasonal closure. The Federal waters of Area 4 shall be closed to lobster fishing from February 1 through March 31.

(1) Lobster fishing is prohibited in Area 4 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 4 during the seasonal closure.

(2) All lobster traps must be removed from Area 4 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends. Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 4 waters during this seasonal closure. The following exceptions apply to the Area 4 seasonal closure:

(i) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(ii) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 4 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (ii) or is transiting through Area 4 pursuant to paragraph (c)(1)(xxx)(B)(5) of this section.

(4) The Area 4 seasonal closure relates only to Area 4. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 4 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(5) Transiting Area 4. Federal lobster permit holders may possess lobster traps on their vessels in Area 4 during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Area 4. For the purposes of this section, transiting shall mean passing through Area 4 without stopping, to reach a destination outside Area 4.

(6) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 4 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

(C) Area 5 seasonal closure. The Federal waters of Area 5 shall be closed to lobster fishing from February 1 through March 31.

(1) Lobster fishing is prohibited in Area 5 during this seasonal closure. Federal lobster permit holders are prohibited from possessing or landing lobster taken from Area 5 during the seasonal closure.

(2) All lobster traps must be removed from Area 5 waters before the start of the seasonal closure and may not be re-deployed into Area waters until after the seasonal closure ends.

Federal trap fishers are prohibited from setting, hauling, storing, abandoning or in any way leaving their traps in Area 5 waters during this seasonal closure. The following exceptions apply to the Area 5 seasonal closure:

(i) Lobster fishers will have a 2-week grace period from February 1 to February 14 to remove all lobster gear from the closed area. During this grace period, any hauled trap must not

be re-set and must be removed from the area. Any lobsters taken from traps during this grace period must be returned to the sea immediately and any Federal lobster permit holder retrieving Area 4 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(ii) Lobster fishers have a 1-week grace period from March 24 to March 31 to re-set gear in the closed area. During this grace period, re-set traps may not be re-hauled and any Federal lobster permit holder re-setting Area 5 traps during this grace period is prohibited from possessing on board any lobster regardless of the area from which the lobster may have been harvested.

(3) Federal lobster permit holders are prohibited from possessing or carrying lobster traps aboard a vessel in Area 5 waters during this seasonal closure unless the vessel operating subject to the grace period identified in paragraph (ii) or is transiting through Area 5 pursuant to paragraph (c)(1)(xxx)(C)(5) of this section.

(4) The Area 5 seasonal closure relates only to Area 5. The restrictive provisions of § 697.3 and § 697.4(a)(7)(v) do not apply to this closure. Federal lobster permit holders with an Area 5 designation and another Lobster Management Area designation on their Federal lobster permits would not have to similarly remove their lobster gear from the other designated management areas.

(5) Transiting Area 5. Federal lobster permit holders may possess lobster traps on their vessels in Area 5 during the seasonal closure only if:

(i) The trap gear is stowed; and

(ii) The vessel is transiting the Area 5. For the purposes of this section, transiting shall mean passing through Area 5 without stopping, to reach a destination outside Area 5.

(6) The Regional Administrator may authorize a permit holder or vessel owner to haul ashore lobster traps from Area 5 during the seasonal closure without having to engage in the exempted fishing process in § 697.22, if the permit holder or vessel owner can establish the following:

(i) That the lobster traps were not able to be hauled ashore before the seasonal closure due to incapacity, vessel/mechanical inoperability, and/or poor weather; and

(ii) That all lobsters caught in the subject traps will be immediately returned to the sea.

(iii) The Regional Administrator may condition this authorization as appropriate in order to maintain the overall integrity of the closure.

* * * * *

(c) ***

(3) ***

(iii) The possession of egg-bearing female lobsters in violation of the requirements set forth in § 697.20(d), v-notched female American lobsters in violation of the v-notch requirements set forth in § 697.20(g), American lobsters that are smaller than the minimum sizes set forth in § 697.20(a), American lobsters that are larger than the maximum carapace sizes set forth in § 697.20(b), or lobster parts, possessed at or prior to the time when the aforementioned lobsters or parts are received by a dealer, will be prima facie evidence that such American lobsters or parts were taken or imported in violation of these regulations. A preponderance of all submitted evidence that such American lobsters were harvested by a vessel not holding a permit under this part and fishing exclusively within state or foreign waters will be sufficient to rebut the presumption.

* * * * *

4. In § 697.19, revise paragraphs (b) through (k) and add (l) to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

* * * * *

(b) Area 2 trap limits. The Area 2 trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 2 by the Regional Administrator, as part of the Federal Area 2 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(c) Area 3 trap limits. The Area 3 trap limit is 1,945 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 3 by the Regional Administrator, as part of the Federal Area 3 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(d) Area 4 trap limits. The Area 4 trap limit is 1,440 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 4 by the Regional Administrator, as part of the Federal Area 4 Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(e) Area 5 trap limits. The Area 5 trap limit is 1,440 traps, unless the vessel is operating under an Area 5 Trap Waiver permit issued under §697.26. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into Area 5 by the Regional Administrator, as part of the Federal Area 5 Limited Access Program. This

allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(f) Outer Cape Area. The Outer Cape Area trap limit is 800 traps. Federally permitted lobster fishing vessels may only fish with traps that have been previously qualified and allocated into the Outer Cape Area by the Regional Administrator, as part of the Federal Outer Cape Cod Area Limited Access Program. This allocation may be modified by trap cuts and/or trap transfers, but in no case shall the allocation exceed the trap limit.

(g) Trap Cuts. Trap allocations shall be reduced in the following Areas as set forth below:

(1) Area 2 allocations shall be reduced according to the following schedule:

Effective Year of Trap Reduction	Area 2 Reductions
April 30, 2015, 11:59 PM	25%
April 30, 2016, 11:59 PM	5%
April 30, 2017, 11:59 PM	5%
April 30, 2018, 11:59 PM	5%
April 30, 2019, 11:59 PM	5%
April 30, 2020, 11:59 PM	5%

(2) Area 3 allocations shall be reduced according to the following schedule:

Effective Year of Trap Reduction	Area 3 Reductions
April 30, 2015, 11:59 PM	5%
April 30, 2016, 11:59 PM	5%
April 30, 2017, 11:59 PM	5%
April 30, 2018, 11:59 PM	5%
April 30, 2019, 11:59 PM	5%

(h) Lobster trap limits for vessels fishing or authorized to fish in more than one EEZ management area. A vessel owner who elects to fish in more than one EEZ Management Area is restricted to the lowest cap limit of the areas and may not fish with, deploy in, possess in, or haul back from any of those elected management areas more lobster traps than the lowest number of lobster traps allocated to that vessel for any one elected management area.

(i) Conservation equivalent trap limits in New Hampshire state waters. Notwithstanding any other provision, any vessel with a Federal lobster permit and a New Hampshire Full Commercial Lobster license may fish up to a maximum of 1,200 lobster traps in New Hampshire state waters, to the extent authorized by New Hampshire lobster fishery regulations. However, such vessel may not fish, possess, deploy, or haul back more than 800 lobster traps in the Federal waters of EEZ Nearshore Management Area 1, and may not fish more than a combined total of 1,200 lobster traps in the Federal and New Hampshire state waters portions of EEZ Nearshore Management Area 1.

(j) Trap Tag Requirements for vessels fishing with lobster traps All lobster traps in Federal waters must have a valid Federal lobster trap tag permanently attached to the trap bridge or central cross-member. Federal lobster permit holders are eligible to receive Area 1 trap tags only if the Regional Administrator has qualified the permit to fish in Area 1 as part of the Federal Area 1 Limited Entry Program. Federal lobster permit holders are eligible to receive Area 2, 3, 4, 5 and/or Outer Cape Cod Area trap tags only if the Regional Administrator has allocated those traps as part of the Federal Area 2, 3, 4, 5 and/or Outer Cape Cod Area Limited Access Program. Any vessel with a Federal lobster permit may not possess, deploy, or haul back lobster traps in any portion of any lobster management area that do not have a valid, federally recognized trap tag permanently attached to the trap bridge or central cross-member.

(k) Maximum lobster trap tags authorized for direct purchase. In any fishing year, the maximum number of tags authorized for direct purchase by each permit holder is the applicable trap limit specified in paragraphs (a) through (f) of this section plus an additional 10 percent to cover trap loss.

(l) EEZ Management Area 5 trap waiver exemption. Any vessel issued an Area 5 Trap Waiver permit under § 697.4(p) is exempt from the provisions of this section.

* * * * *

5. In § 697.20, revise paragraphs (a)(5) through (a)(8), (b)(5) and (b)(6), (d)(1) and (d)(2), (g)(3) and (g)(4), and remove paragraphs (b)(7) and (b)(8) and (g)(5) through (g)(8) to read as follows:

* * * * *

§ 697.20 Size, harvesting and landing requirements.

(a) * * *

(5) Through April 30, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3½ inches (8.89 cm).

(6) Through April 30, 2015, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3½ inches (8.89 cm).

(7) Effective May 1, 2015, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

(8) Effective May 1, 2015, the minimum carapace length for all American lobsters landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 17/32 inches (8.97 cm).

* * * * *

(b) * * *

(5) The maximum carapace length for all American lobster harvested in or from EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6 $\frac{3}{4}$ inches (17.15 cm).

(6) The maximum carapace length for all American lobster landed, harvested, or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 or the Outer Cape Lobster Management Area is 6 $\frac{3}{4}$ inches (17.15 cm).

(d) * * *

(1) Any berried female lobster harvested in or from the EEZ must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30' North latitude, it must be v-notched before being returned to sea immediately.

(2) Any berried female lobster harvested or possessed by a vessel issued a Federal limited access lobster permit must be returned to the sea immediately. If any berried female lobster is harvested in or from the EEZ Nearshore Management Areas 1, 2, 4, or 5, or in or from the EEZ Offshore Management Area 3, north of 42° 30' North latitude, it must be v-notched before being returned to sea immediately.

* * * * *

(g) * * *

(3) No person may possess any female lobster possessing a standard v-shaped notch harvested in or from the EEZ Nearshore Management Area 2, 4, 5, 6, Outer Cape Area or the EEZ Offshore Management Area 3.

(4) No vessel, owner, or operator issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, 6, Outer Cape Area or the EEZ Offshore Management Area 3 may land, harvest or possess any female lobster possessing a standard v-shaped notch.

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